IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DEMITRUS RAY WOOD, Appellant.	No. 38040-4-II UNPUBLISHED OPINION

Houghton, J. — Demitrus Wood[1] appeals his convictions for first degree assault, fourth degree assault with a domestic violence enhancement, and first degree unlawful firearm possession. He argues that the trial court erred in denying his motion to withdraw his guilty plea and raises additional pro se arguments. We affirm.

FACTS

During a November 13, 2007 telephone call to his former girl friend, Cierra Hyatt, Wood threatened to go to Vancouver and injure her new boyfriend, Christopher Pacquel. Later that day, Wood traveled to Vancouver, drove by Pacquel and Hyatt's vehicle, and fired a semiautomatic pistol at them.

By a third amended information, the State charged Wood with first degree assault, fourth degree assault, and first degree unlawful possession of a firearm. On July 1, 2008, he pleaded

[1] Variations of the spelling of Demitrus appear in the record.

guilty to all three counts and signed the guilty plea.

The plea form originally listed the community custody term as 18 to 36 months, but the trial court later amended it by handwritten notation to read 24 to 48 months. In the same document, the trial court circled "18 to 36 months" of community custody rather than "24 to 48 months." Clerk's Papers at 5. The trial court and parties discussed the inconsistency, and the trial court clarified that 24 to 48 months was the correct community custody term.

On July 10, Wood moved to withdraw his guilty plea, claiming his emotions overcame him when he signed the guilty plea. The trial court denied his motion. He appeals.

ANALYSIS

Wood contends that the trial court erred by denying his motion to withdraw his guilty plea. He argues that the document was confusing with regard to the length of community custody and, therefore, he pleaded involuntarily.

Under CrR 4.2(d), the trial court shall accept a guilty plea only once it determines that the defendant made the plea knowingly, voluntarily, and intelligently. The trial court shall allow a defendant to withdraw his guilty plea if it appears necessary to correct a manifest injustice. CrR 4.2(f); *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). So long as the totality of the circumstances demonstrate that the defendant pleaded guilty knowingly, voluntarily, and intelligently, withdrawal of a guilty plea is not necessary. *State v. Branch*, 129 Wn.2d 635, 644, 919 P.2d 1228 (1996).

On the record, the trial court explained to Wood that his community custody would be 24 to 48 months because his crime was a serious violent offense. Wood acknowledged that he

understood. The record here establishes that he knowingly, voluntarily, and intelligently pleaded guilty. The trial court did not err by denying his motion to withdraw his guilty plea and Wood's argument fails.

STATEMENT OF ADDITIONAL GROUNDS[2]

Pro se, Wood first contends that his trial counsel provided ineffective assistance. To establish ineffective assistance of counsel, the defendant must show defective performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Here, Wood claims that the judgment, sentence, and charging document were statutorily or constitutionally insufficient. He fails to argue why they are insufficient, and we decline to address this issue further. RAP 10.10(c).

Second, Wood contends that the trial court violated his right to a speedy trial because the State filed its initial information on November 15, 2007, and its third amended information on July 1, 2008, at the time of the plea agreement. He argues that this period extends beyond that allowed under the speedy trial rule.

A defendant has a right to a speedy trial under the Sixth Amendment and article I, section 22 of the Washington State Constitution. *State v. Carson*, 128 Wn.2d 805, 820, 912 P.2d 1016 (1996). Although CrR 3.3(b)(1)(i) requires trial within 60 days when in custody, this is not a constitutional mandate. *Carson*, 128 Wn.2d at 821. Under CrR 3.3, the trial court dismisses charges when the applicable speedy trial period has expired, but CrR 3.3(e) excludes valid

[2] RAP 10.10.

continuances and other delays from the speedy trial period. The materials necessary to support Wood's claim are not a part of the record on this appeal. Therefore, the proper means to raise this argument is through a personal restraint petition under RAP 16.4.

Third, Wood contends that the prosecutor substantially amended the charging document and, because of this, the State should have re-arraigned him each time it amended the charging document. CrR 2.1(d) allows the State discretion to amend the charging document at any time before verdict or finding so long as the substantial rights of the defendant are not prejudiced. *State v. Collins*, 45 Wn. App. 541, 551, 726 P.2d 491 (1986). The State may amend the information without arraignment if substantial rights of the defendant are not prejudiced or if the amendment is merely formal. *State v. Allyn*, 40 Wn. App. 27, 35, 696 P.2d 45 (1985). The defendant bears the burden of demonstrating prejudice. *State v. Brisebois*, 39 Wn. App. 156, 162, 692 P.2d 842 (1984).

Here, the State amended the charges twice to allow for the changes resulting from Wood's plea bargain. The change did not prejudice him, nor did it impinge on his substantial rights. His argument fails.

Fourth, Wood contends that the State lacked sufficient evidence to charge him when he was arrested. He cites *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986) (upholding a motion to dismiss for lack of material facts sufficient to prove guilt), to support his claim. He cites an incorrect standard. The State does not need sufficient evidence to arrest; rather, law enforcement needs probable cause to arrest. CrR 2.2(a)(2). His argument fails.

Fifth, Wood contends that the State charged him with more serious crimes in the

information than in the certificate of probable cause. The State does not charge through the

certificate of probable cause. Instead, the State determines, based on the certificate of probable cause, what charges the certificate of probable cause supports and then brings charges in the information. CrR 2.1(a)(1). Wood's argument likewise fails.

Sixth, Wood contends that the prosecutor's signature differs on several documents. He questions whether a prosecutor can "forge" another prosecutor's signature for signing documents. Again, the materials necessary to support his claim are not a part of the record on this appeal. Therefore, the proper means to raise this argument is through a personal restraint petition under RAP 16.4.

Finally, Wood contends that he did not sign the plea form but merely initialed it. He argues that this invalidates his plea statement. Nevertheless, the record shows that Wood said he signed the plea form and admitted as much to the judge. Wood's final argument also fails.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, J.

We concur:

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Bridgewater, J.

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Van Deren, C.J.